Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 77-6536

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

JOHN CORNELIUS HAMMONS, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioner contends that his conviction for receiving a firearm should be set aside because Congress did not intend to prohibit the temporary receipt of a firearm by a convicted felon where the felon has sought to prevent misuse of that firearm by another person.

1. Following a jury trial in the United States District Court for the Southern District of Alabama, petitioner was convicted of receiving a firearm after having been convicted of a felony, in violation of 18 U.S.C. 922(h)(1). He was sentenced to two and a half years' imprisonment.[1/] The court of appeals affirmed (Pet. App.; 566 F.2d 1301).

1/ This sentence was to be served concurrently with the remainder of the sentence imposed under the prior federal conviction -- an August 3, 1973, conviction for interstate transportation, receipt and concealment of a stolen motor vehicle, in violation of 18 U.S.C. 2312 and 2313. At that time, petitioner was sentenced to a term of three years' imprisonment, and ordered to serve six months of this sentence; the balance was suspended upon the condition that he remain on probation for two years and six months. Prior to the expiration of his probation period, petitioner was prosecuted for the present offense. At the conclusion of the trial in this case a probation revocation hearing was held and petitioner's probation was revoked. The basis for the revocation of his probation was the present conviction and a conviction in a state case for driving while intoxicated. Petitioner does not here challenge the revocation of his probation.

The evidence, as summarized by the court of appeals, showed that on June 10, 1976, petitioner went to a nightclub in Prichard, Alabama. At approximately 3:00 a.m., Hudson Bridges, a friend of petitioner's, entered the club, looking for his girlfriend Pat Townley. When Townley refused to leave the club, Bridges obtained a pistol from his car, returned to the club, and forcibly escorted Townley outside. Petitioner followed the couple outside and persuaded Bridges to hand over the gun. He then reentered the club with the gun still in his possession. Upon the arrival of two police officers approximately ten minutes later, petitioner attempted to give the gun to a waitress with whom he had been talking. During the transfer of the gun it went off and shot petitioner.

On July 16, 1976, in the City Court of Prichard, petitioner was convicted of discharging a firearm within the city limits and was fined $100 (Case No. 82519). He appealed his conviction to the Circuit Court of Mobile County, which dismissed the charge on August 30, 1976. Petitioner was subsequently indicted and convicted in federal court for violation of 18 U.S.C. 922(h).

2. As explained in Rinaldi v. United States, No. 76-6194, decided November 7, 1977, the Department of Justice has adopted a formal policy of declining to prosecute individuals for acts forming the basis for a prior state prosecution, except where the second prosecution would advance compelling interests of federal law enforcement, and then only after specific approval by the appropriate Assistant Attorney General, and the Attorney General. The federal prosecution in this case was not authorized as

required by the formal policy of the Department of Justice. Upon full consideration of the pertinent facts, we have determined that there were no compelling reasons for the federal prosecution. Therefore, in accordance with the government's policy against successive state and federal prosecutions in the circumstances presented here, we respectfully request the Court to grant the petition, vacate the judgment of the court of appeals, and remand the case to the district court with instructions to grant the government's motion to dismiss the indictment. See Rinaldi v. United States, supra; Frakes v. United States, No. 77-5742, decided March 6, 1978.

Respectfully submitted.

WADE H. McCREE, JR.,
Solicitor General.

JULY 1978.